
**E-89-12 Reporting professional misconduct of
opposing counsel**

Question

Must a lawyer report a violation of the rules of professional conduct of opposing counsel, that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, to the appropriate disciplinary agency if reporting the information would prejudice the interests of the lawyer's client in the representation in question?

Opinion

No. The Committee concurs with the view of Professor Charles W. Wolfram that:

(t)he reporting obligation of MR ABA [Model Rule] 8.3(a) [SCR 20:8.3(a)] is narrower than the Code's DR 1-103(A) in one material way. The confidentiality rule extends to all 'information relating to representation of a client,' the only relevant exception being that for 'disclosures impliedly authorized to carry out the representation' thus, reporting is foreclosed if it would entail revelation of any client information whether or not revelation would prejudice the client's interests. Reporting under rule 8.3(a), therefore, is required only 1) when to do so would affirmatively advance a client's interests; or 2) when reporting would not involve revelation of any information relating to the representation of a client.

C. Wolfram, *Modern Legal Ethics* 685 (West 1986).

Although the Wisconsin rule on "confidentiality of information," SCR 20:1.6, differs from the American Bar Association's Model Rule 1.6 in material respects, those differences are not relevant to our concurrence with Professor Wolfram. SCR 20:8.3(c) "Does not require disclosure of . . . information otherwise protected by [SCR 20:1.6]. . . ." And SCR 20:1.6 does not permit reporting the misconduct in question, "unless the client consents after consultation. . . ." SCR 20:1.6(a).